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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1565

SOUTHERN OHIO COAL COMPANY AND OHIO POWER COMPANY, *Petitioners,*

vs.

UNITED MINE WORKERS OF AMERICA, UNITED MINE WORKERS OF AMERICA, DISTRICT NO. 6, AND UNITED MINE WORKERS OF AMERICA, LOCAL NOS. 1890, 1886 AND 1957, *Respondents.*

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE BITUMINOUS COAL OPERATOR'S ASSOCIATION, INC. IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Bituminous Coal Operators' Association, Inc. ("BCOA"), by its undersigned counsel, not having received consent of the Respondents, moves pursuant to Rule 42 of the Supreme Court Rules that the Court

grant it leave to file the enclosed Brief *Amicus Curiae* in support of the Petition for Writ of Certiorari filed by Southern Ohio Coal Company and Ohio Power Company.

BCOA'S INTEREST AND WHY THE FILING IS DESIRABLE

BCOA is a national association of bituminous coal producers, organized in 1950 and continuing in being until the present time. BCOA has approximately 50 direct members and some local coal association members, including the major coal producers in all of the bituminous coal mining states. Its members produce about 75 percent of the coal mined under the National Bituminous Coal Wage Agreement. BCOA negotiates and assists in interpreting this Agreement.

BCOA was organized for the purpose of attempting to help bring stability out of chaos in employer-employee relations in the coal industry. These efforts have been successful to a large degree, but the continued increase in the incidence and magnitude of wildcat strikes in recent years has presented an imminent threat to the production of coal and to the stability of employment in the coal industry.

This case is before the Court on a Petition for a Writ of Certiorari by the Southern Ohio Coal Company and the Ohio Power Company. If the Writ is issued, the Court's decision should establish legal guidelines to determine the application of the recent *Buffalo Forge* decision, 428 U.S. 397, 96 S.Ct. 3141 (1976), to the recurring wildcat strikes in the coal industry. This will have substantial and even crucial impact on the effectiveness and integrity of the agreements between BCOA and the United Mine Workers of America ("UMWA")

and on the ability of the bituminous coal industry to meet the Nation's need for coal.

All BCOA members will be affected by the decision of this Court.

WHEREFORE, BCOA moves the Court to allow the filing of the Brief *Amicus Curiae,* which is submitted herein with the requisite number of printed copies.

Respectfully submitted,

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BCOA'S INTEREST

The Bituminous Coal Operators' Association, Inc., herein called "BCOA", is a national association of coal operators, organized in 1950 for the purpose of negotiating and assisting in interpreting BCOA's national agreements with the United Mine Workers of America, herein called "UMWA". BCOA has approximately 50

members who operate in all of the bituminous coal mining states and who collectively produce approximately 75 percent of the bituminous coal mined under the National Bituminous Coal Wage Agreement of 1974, herein called the "1974 Agreement".

BCOA was formed against the backdrop of the labor strife in the coal industry during the 1940's a period characterized by strikes and Government seizures of the coal mines. BCOA's purpose was to create more stable labor relations and to establish and maintain harmonious relationships between the coal operators and their employees and their employee representative, the UMWA. For a period of time these efforts were successful in that since the early 1950's a succession of national labor agreements have been negotiated between BCOA and UMWA without any seriously prolonged or crippling economic strikes. Escalating wildcat strikes now threaten all this progress.

The latest contract renewal was the 1974 Agreement which became effective in December 1974 to run for a three-year period. This Agreement was hailed as one of the most progressive labor agreements ever negotiated. It provides for wage and benefit levels which are at least as beneficial to the miners as those in any other major industry. It also contains provisions for the handling of grievances and for various types of expedited arbitration over a broad range of issues. All local grievances, disputes or local trouble of any kind are subject to final and binding settlement through the grievance-arbitration procedures of the agreement. There is no labor agreement of record that contains any broader grievance-arbitration clauses.

The griveances at the local mine level which are not settled are assigned by rotation to panel arbitrators.

These panel arbitrators are empowered to hear the grievances and to render final and binding decisions. The panel arbitrator's decision is subject to review by an Arbitration Review Board, composed of representatives of each party and a permanent neutral umpire selected by BCOA and UMWA.

The function of the Arbitration Review Board is to resolve conflicts in panel arbitrator decisions, to determine whether a panel arbitrator's decision is arbitrary, capricious, or fraudulent, and to decide questions of contractual interpretations affecting the industry as a whole. There are special expedited procedures for discharge cases, and for handling safety disputes. The pertinent contract provisions are set forth in Appendix A.

The provisions for grievance handling and arbitration are fully functioning. The number of arbitrations has steadily increased since 1974. The procedures are readily available; and they are being used by the vast majority of the coal miners to resolve their grievances.

But, unfortunately, there are a relative few coal miners who from time to time take the law in their own hands to engage in wildcat strikes over a local grievance or dispute. A local strike is sometimes escalated into a widespread wildcat strike encompassing all or several UMWA districts. Such escalation is normally brought about by "roving" pickets who fan out over the coal fields and shut down mine after mine in order to mount increasing pressure on the mine of origin to forego arbitration and give in to the grievance.

Despite the forward-looking 1974 Agreement, stability of employment in the coal industry has steadily worsened since that Agreement was signed. There were more wildcat strikes in the bituminous coal industry in

1974 than ever before in history. The record in 1975 was worse than in 1974; in 1976 it was worse than in 1975; and 1977 will be the worst year yet. The losses in wages, production, and revenue to the Health and Retirement Funds for 1973, 1974, 1975, 1976, and the first four months of 1977 are set forth in Appendix B.

In recent years, there have been periodic wildcat strikes of major proportions in progress in coal, sometimes engulfing all or part of several major coal producing states. In the summer of 1976, for example, it is estimated that approximately 80,000 coal miners were idled by a wildcat strike which started at a single mine in West Virginia over the classification of one job.

The particular work stoppage in West Virginia was at a single mine and was over a clearly arbitrable issue —an issue that *was* indeed arbitrated. It caused the shutdown of over one-half of the total production of bituminous coal in the Nation. It inflicted severe losses on coal production, on the coal miner, on the Health and Retirement Funds, on the coal communities, on the coal States, and on the Nation. There have been other widespread wildcat strikes since that time.

Apart from the other astronomical economic losses arising from these wildcat strikes, they pose an imminent threat to the Health and Retirement benefits of the active miners and the 80,000 pensioners.

In the 1974 Agreement, the mine operators agreed to double their contributions to these Trust Funds (which had also been done in 1971) and to dramatically increase the pensions both for present pensioners and for the future pensions of active miners. The health and medical benefit plans in the bituminous coal industry are among the most liberal in the Nation.

But, the contributions to these trust funds by employers are based on a combination of tons of production and cents per hour for hours actually worked. Consequently, the financial stability of these funds depends directly on the continuing and uninterrupted production of coal. This stability has been threatened by the rising level of wildcat strikes to the point where the health trusts for active and retired miners are in a bankrupt positon. The Board of Trustees, the Chairman of which is appointed by the UMWA, has issued statements warning of the serious damage to the miners' Health and Retirement benefits arising from the recurring incidence of wildcats. The two benefit funds are in virtual bankruptcy. (See Appendix C).

BCOA and its members have a grave and continuing interest in preserving the integrity of the periodic agreements negotiated with the UMWA, in preserving the grievance-arbitration procedures of those agreements, and in maintaining employment stability and production of bituminous coal. BCOA and its members also have a similar direct interest in the stability of the Health and Retirement Funds.

Recurring and escalating wildcat strikes are, to our knowledge, a phenomenon not found in any other industry to any similar degree. But in the coal industry, they are a serious and mounting threat to the nation's economy.

BCOA does not believe in nor advocate the settlement of labor disputes in the courts. BCOA encourages the settlement of disputes by the grievance-arbitration procedures of the agreement. But the courts must perform their traditional role of establishing the parameters of lawful conduct in order that the parties to labor

disputes are made aware of their mutual rights and obligations.

Because of its direct and overriding interest in improving labor relations, promoting labor peace, insuring stability of employment, and encouraging respect for the agreement, BCOA files this brief to respectfully bring to the attention of this court the scope and seriousness of the issues which are before it.

REASONS FOR GRANTING THE WRIT

Southern Ohio Coal has presented three questions for review; all are important issues. BCOA supports the postion of Southern Ohio Coal Company on each of these issues.

1. Pattern and Practice Strikes over Arbitrable Grievances.

Question A deals with whether a district court has the power to enjoin a labor union from engaging in a "pattern or practice" of striking over arbitrable issues in a situation where that union has a history of engaging in repeated strikes over a variety of arbitrable issues.

There is, as pointed out in detail in the Petition, a conflict in the Circuit Courts on this issue which is a nationally important one and should be resolved. The court below, while granting that some prospective relief was permitted, gave an unrealistically narrow scope to such relief, and vacated the district court's injunction.

The grounds by which the injunction was vacated, and indeed the lower court's view of the controlling principle, are far from clear. The court states that,

> "We join those courts which have concluded that granting prospective injunctive relief in appropriate cases is consistent with the accommodation reached in *Boys Markets* between the policies of Norris-La Guardia and the public policy encouraging peaceful settlement of labor disputes through arbitration."

But, says the court, "prospective injunctions should only be granted in extreme cases." Then the court attempts to sum up its philosophy as follows:

> "Before an injunction may issue which grants prospective relief, the District Court should expressly find: That the present strike may be enjoined under *Boys Markets;* that the union has engaged in a pattern of strikes over arbitrable grievances that is likely to continue; that the strikes constituting the pattern of violation would warrant relief under the *Boys Markets* formula; and, that the decree is limited to specifically identified areas of dispute which have already been adjudicated and which satisfy the *Boys Markets* guidelines."
> [footnote omitted]

The rule as so stated is confusing to say the least and close to being unintelligible. It provides no clear guide to the district courts. The only thing that is clear from the entire tenor of the court's opinion is that it is intended to be highly restrictive, and not to allow in simple terms a prospective injunction which prohibits future strikes over arbitrable issues. In this unduly restrictive approach it clearly conflicts with the views of the Seventh, Ninth, and Tenth Circuits, as the court below itself concedes.

The final proviso of the lower court's articulation appears to say that the only strikes that can be prospectively enjoined (even if all other criteria are met) are

strikes over disputes which have previously occurred and have been arbitrated.

That type of injunction amounts to little more than the enforcement of prior arbitration awards. This is obviously very narow since it is unlikely that the exact dispute will recur. It is more likely that subsequent strikes will relate to other issues which, while clearly arbitrable, have not arisen before and have not been adjudicated.

Since a pattern and practice of strikes over arbitrable issues is characteristic of the coal industry, the question is one of national importance and the rule needs clarification.

2. Responsibility of Union for Acts of its Members

Question B relates to the responsibility of a labor union for the actions of its members at a particular work site who repeatedly engage in strikes over arbitrable issues; and the union, with continuing knowledge of the strike activity, takes no action to prevent or to end such strikes.

This question brings into play the so-called "mass action" principle. It is an important question in the coal industry for, again, this situation is characteristic of the coal miners' union.

We adopt Petitioners' arguments with respect to this issue.

The court below acknowledges that on this issue, as well as on Question A, it is out of step with other Courts of Appeals; the court refused to follow "ordinary principles of agency law" and to hold the District and International liable for failing to use reasonable means avail-

able to them to attempt to end unauthorized strikes. Instead, the court below chose to follow its own opinion in *Peabody Coal,* 543 F.2d 10 (6th Cir. 1976). The court flatly holds that the union may only be held responsible for the authorized or ratified actions of its officers and agents, and cannot be required to use its best effor to curtail an illegal strike.

If this view of the law prevails, it will only serve to place the stamp of judicial approval on the spreading blight of wildcat strikes in the coal industry. It means that the union can negotiate periodic national agreements with BCOA and then walk away from them while its members thumb their collective noses at the agreement, and strike at will.

3. The Buffalo Forge Issue.

While BCOA respectfully submits that *Buffalo Forge* was wrongly decided, the Court does not have to face that issue here because this case (which is representative of the typical wildcat strike in coal) is clearly distinguishable from *Buffalo Forge,* 428 U.S. 397, 96 S.Ct. 3141 (1976).

Reduced to its bare bones, *Buffalo Forge* held that a "sympathy" strike is not enjoinable because of the proscriptions of Norris-LaGuardia against labor injunctions. *Buffalo Forge* defined a sympathy strike as one where one local union (having an on-going labor agreement and having no direct interest in the underlying dispute) ceases work in "sympathy" with a sister local engaged in a legal, primary strike against a common employer.

The majority reasoned that since the "underlying" dispute between the striking local and the employer was

not arbitrable, the "sympathy" strike was not "over" an arbitrable issue and, therefore, not enjoinable under *Boys Markets,* 398 U.S. 235 (1970).

The mere statement of this ruling and its context sharply distinguish *Buffalo Forge* from the typical wildcat strike in the coal industry. The question presented in the *Southern Ohio Coal Company* case could be put in these terms:

Whether or not under Boys Markets *a court which concededly can enjoin strikes over arbitrable grievances at their source, can also enjoin locals at other mines from striking to place increasingly mounting pressure on the particular employer and on the BCOA membership to forego their right to arbitration and capitulate to the union's grievance?*

To consider this question in proper context, it must be determined whether the strikes at other mines of the same and other employers are truly "sympathy" strikes in the meaning of *Buffalo Forge,* or whether they are merely extensions of the original economic pressure to force the employers, indivdually and collectively, to accept the union's interpretation of the National Agreement.

BCOA submits that this is the key to the issue.

The Nature of Wildcat Strikes In the Coal Industry

The *Southern Ohio Coal Company* case presents in clear focus the two typical phases of the wildcat strike as it is practiced in the coal industry. Wildcat strikes characteristically start with a strike at a local mine over some grievance or dispute which is clearly arbitrable under the National Agreement. The local union membership chooses not to arbitrate, and goes out on strike. Normally, one or more men walk out, and the others follow. The mine is then on strike. Unless the strike is spread by roving pickets, the single mine strike normally lasts a day or more; and the men eventually return to work. Strikes like those occur without fail every day in the coal industry. While damaging, these local strikes are not the worst problem. But, they are frequently merely the first phase in a larger strike.

The second phase of a wildcat strike occurs when the strikers at the originating mine fan out and picket out other mines. They do not always picket or move openly, but often do so covertly. They do not carry picket signs or proclaim their cause. They come to a mine in caravans, sometimes masked and with license plates covered, and shut it down. They then move on to another mine, returning later, if necessary, to shut down the same mines again. Their tactics are successful largely because of the coal miners' tradition of automatically ceasing work when a "picket" appears at their mine. It is also common practice for the miners at a mine closed by roving pickets to in turn picket out neighboring mines so that there is a growing momentum and a snow-balling effect to the spreading wildcat strike. This explains why only a handful of organized roving pickets can, within a few days, cause the shutdown of all the mines in an entire UMWA district, several districts, an entire State, several States, or the entire industry.

The History of the Southern Ohio Coal Company Dispute.

Typically, the strike at Southern Ohio Coal's mines did not start at Southern Ohio Coal, which is located in UMWA District 6 in Ohio.

It started at one mine of Cedar Coal Company in UMWA District 17 in Southern West Virginia in the summer of 1976. That strike was over an arbitrable issue. It fanned out until it shut down more than half of the unionized bituminous coal mines in the Nation. The Southern Ohio Coal mines were shut down by roving pickets. The Court of Appeals stated in its opinion that it was willing to assume "for purposes of this opinion" that the "stranger picket lines were established by a roving band of mine workers engaged in an illegal strike at another mine." In other words, it was assumed that the pickets had struck their own mines over an arbitrable grievance.

When Southern Ohio sought relief in the U.S. District Court, it was first granted, but eventually was denied on the basis of *Buffalo Forge*. The Court of Appeals for the Sixth Circuit agreed with the District Court.

We submit that the lower court misinterpreted and misapplied *Buffalo Forge;* and that in the interests of stability of labor relations in the coal industry, the Court should grant *certiorari* in this case.

BCOA submits that in this type of case, injunctive relief is clearly appropriate as a legal matter and is essential: (1) to preserve the integrity of the Agreement; (2) to protect the Health and Retirement Funds; (3) to secure an adequate supply of coal; and (4) to prevent chaos in the coal fields. We further submit that court relief is not prohibited by the *Buffalo Forge* ruling.

Despite the widespread occurrences of wildcat strikes in coal, BCOA does not believe that any more

than a few willful men are behind or supporting these strikes; and the UMWA's leaders have expressed the same opinion. Most of the coal miners idled by these strikes are victims, not willing participants. Most of them do not even know what the strike is about; nor do they have any interest in supporting the issue. They are out in response to "roving" or "stranger" pickets who have come to their mines and shut them down. Their failure to work is the UMWA member's customary and automatic response to the presence of pickets. This automatic reflex is supported by nothing more rational than tradition, but tradition has been enough to support the wildcat strike over the years.

BCOA makes these statements against the backdrop of years of tragic experience with similar widespread wildcat strikes. The truth is that because of the miners' tradition of not working in the presence of pickets, small bands of pickets are able to shut down large segments, and even all, of the entire coal industry.

Boys' Markets Provides the Legal Basis for Injunctive Relief And Buffalo Forge Does Not Preclude It

The holding of the Supreme Court in *Boys Markets* is well known and has been frequently applied to wildcat strikes in the coal fields. *Boys Markets* holds that where there is a labor contract in effect containing a binding grievance and arbitration procedure, there arises an implied agreement not to strike over an arbitrable dispute. In the event such a strike does occur, the federal courts are empowered to enjoin such strikes and to order arbitration of the dispute.

The courts have frequently noted the scope and breadth of the grievance-arbitration clause of the 1974

Agreement. Article XXIII, Section (c) of that Agreement provides for grievance-arbitration of differences arising as to the meaning and application of the provisions of the Agreement; differences arising over matters not specifically mentioned in the Agreement; or local trouble of any kind. This clause was given a very broad scope by this Court in *Gateway Coal Company* v. *UMWA*, 414 U.S. 368 (1974). That case involved a safety issue; and the Supreme Court extended *Boys Markets* to an injunction enforcing the implied no-strike clause in the then existing 1971 National Agreement, although the question of arbitrability of a safety grievance was itself a "substantial question of contract interpretation." 414 U.S. at 380-384. See, footnote 14 in Mr. Justice Stevens' opinion in *Buffalo Forge*.

BCOA submits that *Boys Markets* is applicable here. There was admittedly an arbitrable dispute at the original mine.

When other UMWA local unions such as those at Southern Ohio Coal Company were picketed and then ceased work, their actions were plainly designed to frustrate and to undermine the arbitration process. As the Supreme Court said in *Buffalo Forge*, "The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties." In giving approval to *Boys Markets* in *Buffalo Forge*, the Court stated further that,

> "Striking over an arbitrable dispute would interfere with and frustrate the arbitral process by which the parties had chosen to settle a dispute. The *quid pro quo* for the employer's promise to arbitrate was the union's obligation not to strike over issues that were subject to the arbitration machinery." 96 S.Ct. 3141, 3147 (1976)

It seems quite clear that the force and effect of the action of the Southern Ohio Coal Company locals was to join hands with the roving pickets in an effort to compel the original employer (Cedar Coal Company) to capitulate on an arbitrable dispute. Therefore, all locals engaging in and joining this concerted effort breached their implied obligation not to strike over an arbitrable dispute, and were subject to injunction under *Boys Markets*.

In the wake of *Buffalo Forge*, some confusion and uncertainty has been manifested by district judges and by courts of appeals as to its application to wildcat strikes in the coal industry. See also, *U.S. Steel Corp.* v. *UMWA Local 6321*, 548 F.2d 67 (3rd Cir. 1976). It appears that the lower courts have over-reacted to *Buffalo Forge*, which is understandable. We can appreciate the burdens sometimes imposed on the courts by court actions to enjoin these widespread and recurring wildcat strikes. But, when one party refuses to honor an agreement to arbitrate rather than to strike, we know of no way to enforce that agreement except through the courts of law.

The majority of this Court in *Buffalo Forge* pointed out the features of that case which differentiated it from *Boys Markets*.

The Court stated:

> ". . . The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of

> the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents. *The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain.*" [emphasis added]

The situation presented here is wholly distinguishable from *Buffalo Forge*. Overriding all else, the essential difference between *Buffalo Forge* and this case is the one emphasized by this Court in the above quotation. In *Buffalo Forge,* the strike had neither the purpose nor effect of evading an obligation to arbitrate or of depriving the employer of his bargain. In this case, that was the whole purpose of the strike and the accompanying picketing.

The conclusion seems inescapable that all UMWA locals which went on strike in response to roving pickets were direct parties in a concerted effort to gain by force, rather than by submission to arbitration, their interpretation of the National Agreement. Thus, the purpose and effect of the activities of all those locals was to evade the contractual obligation to arbitrate.

Not even superficially can it be said that this was a "sympathy strike" within the meaning of *Buffalo Forge*. This is not a case where one union with a separate agreement in a separate employee bargaining unit respects the picket lines of another union negotiating for a separate agreement in a separate employee unit. In such a case, there is no arbitrable dispute other than the sympathy strike itself. That was the situation in *Buffalo Forge*. The union engaging in the

sympathy strike had no *direct* interest in the dispute between the striking union and the employer.

Here, all UMWA locals and their members are parties to the same National Agreement, negotiated between BCOA and UMWA "on behalf of its members". They have a direct unity of interest in any underlying dispute involving the meaning and application of any of the terms of their identical agreement. They stand to gain or lose equally from the arbitration of the issue, and to gain or lose equally from resolution of the issue by engaging in a wildcat strike. This is so because interpretation of the 1974 Agreement is a matter in which the members of BCOA and UMWA have an identical and direct interest. The arbitrator's ruling at one mine favorable to one grievant can benefit the members at all mines; and an unfavorable ruling can equally be detrimental to them. An enforced settlement by the use of economic force has exactly the same effect.

This situation is thus essentially different from that in *Buffalo Forge* where, as the Court pointed out, there was *no underlying dispute* "that was even remotely subject to arbitration."

Another distinction is that in *Buffalo Forge* the union originally on strike was engaged in a *legal,* primary strike and primary picketing. Here, the original strike was *illegal* and in violation of the 1974 Agreement. It would be paradoxical to find that the original strike was an enjoinable one, but that the strikes by other locals in aid of the same unlawful objective are lawful and unenjoinable.

Moreover, BCOA believes that the application of *Buffalo Forge* must be considered in the context of the

collective bargaining relationships which exist in the bituminous coal industry.

In *Buffalo Forge* there were two separate locals representing two separate "bargaining units". One was striking to obtain its own separate agreement. The other struck in sympathy.

By contrast, all bituminous coal miners employed by members of BCOA are members of a *single multi-employer bargaining unit.* The employers in that bargaining unit are all the members of BCOA. All UMWA miners employed by members of BCOA are covered by a single national agreement containing identical terms and conditions applicable to all of them. The Agreement is a national agreement negotiated between BCOA and the International Union.

The terms of the National Agreement apply alike to all members of UMWA employed by BCOA members; likewise their employers are all mutually bound to respect and to follow the common grievance-arbitration procedures. They also all are bound by Article XXVII, to ". . . maintain the integrity" of the agreement.

Vital to maintaining this "integrity" is the pledge to abide by the grievance-arbitration procedures for settling disputes. As members of the same bargaining unit covered by the same national agreement, each BCOA member and each UMWA member has an obligation to uphold the agreement and a duty not to engage in lockouts, in strikes, or in picketing over any dispute, no matter at what mine or what Company the dispute arises, so long as that underlying dispute is arbitrable.

If the situation were one in which there were a single plant-wide unit and contract, it would make no sense

to say that the employees in Department A who struck over an arbitrable grievance *could be* enjoined under *Boys Markets,* but that the employees in Department B who went out in "sympathy" *could not.* Clearly, in such a situation, the entire strike in a single bargaining unit would be enjoinable under *Boys Markets.*

Conceptually, although on a larger scale, the case just hypothesized is the situation between BCOA and the members of the UMWA under the 1974 Agreement. There is one national contract and one national bargaining unit. The miners at each individual mine of member companies may and do belong to various local unions. They have their own seniority lists and initiate their own grievances. But these locals do not constitute separate bargaining units. Their wages, hours, conditions, benefits, and seniority rights are negotiated between BCOA and UMWA and are derived from the one national agreement. Their grievances are processed under that agreement. Indeed, grievances go in progressive steps from the local to the District level and then to arbitration before panel arbitrators selected by BCOA and UMWA under the National Agreement.

Moreover, in the 1974 Agreement, for the first time, a provison was made for a National Arbitration Review Board which functions as the final arbiter of all disputes. The professed purpose and effect of this National Board was to bring about uniformity in the interpretation and application of the agreement.

Given the existence of a single agreement in a single multi-employer bargaining unit, and an arbitration procedure designed to insure conformity of interpretation, BCOA submits that all members of the Union employed by members of BCOA are mutually

bound to abide by the common grievance-arbitration procedures. In this unitary relationship, the concepts of "primary" strikes and "sympathy" strikes do not apply. These terms connote separateness of unions, units, and interests which does not exist here. All coal miners have a direct interest in the disputes of all other miners. Because of this close unity of interest among the members of the UMWA in the outcome of any contractual dispute, *Buffalo Forge* appears clearly inapposite.

The Norris-LaGuardia Proscriptions Against Labor Injunctions Were Enacted In a Context of Injunctions Against Primary Strikes, and Not in the Context of Mutual Compliance with Labor Agreements.

The Norris-LaGuardia Act which was enacted more than 40 years ago, was adopted in response to a growing trend of the courts to enjoin primary strikes on the ground that they were in violation of the Sherman Act, as creating a monopoly in restraint of trade. At that point, there was a direct confrontation between mangement and labor over the basic question of the rights of unions to represent employees and to engage in primary strikes. There was at that time no law or mechanism for certifying unions as collective bargaining representatives of employees or of enforcing, by law, the right of collective bargaining.

But, this was altered by the National Labor Relations Act in 1935, which was declared constitutional by this Court in 1937, which gave employees the right to select an exclusive bargaining agent and required employers to recognize and to bargain for agreements with such representatives.

Since that time, employee unions have exercised these rights and thousands of labor agreements are negotiated every year.

Once this relationship of collective bargaining comes into being, as it has in the coal industry, the appropriate emphasis should be focused on the maintenance of stability of employment under the agreement negotiated between mangement and labor.

That is the issue involved here. The simply stated principle embodied in the National Bituminous Coal Wage Agreement is that *both parties* shall "maintain the integrity of the agreement" during its term, recognizing that at periodic intervals there may be legal strikes or lockouts over the terms of a new agreement. A part of this mutual obligation during the contract term is the obligation of both parties to use grievance-arbitration procedures of the agreement to resolve disputes. This leaves no room for strikes or lockouts to force the other party to adopt the aggressor's unilateral interpretation of the agreement.

Otherwise, the concept of an agreed period of labor peace under an agreement for a fixed term becomes an illusion.

For the above reasons, BCOA supports the Petition for a Writ.

Respectfully submitted,

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APPENDIX

APPENDIX A

National Bituminous Coal Wage Agreement of 1974

ARTICLE III—HEALTH AND SAFETY

Section (p) Settlement of Health or Safety Disputes

When a dispute arises at the mine involving health or safety, an immediate, earnest and sincere effort shall be made to resolve the matter through the following steps:

(1) By the aggrieved party and his immediate supervisor. Any grievance which is not filed by the aggrieved party within twenty-four hours following the shift on which the grievant reasonably should have known of such grievance shall be considered invalid and not subject to further consideration under the grievance machinery.

(2) If no agreement is reached at step 1, the grievance shall be taken up by the Mine Health and Safety Committee and mine management within four days of the conclusion of step 1. A standard health and safety grievance form, agreed upon by the parties, shall be completed and jointly signed by the parties to the grievance.

(3) If no agreement is reached within four days after conclusion of step 2, the grievance shall be taken up at the mine by the UMWA district health and safety representative and a designated representative of the Employer. If the dispute involves an issue concerning compliance with federal or state mine safety laws or mandatory health or safety regulations, the appropriate inspection agencies shall be called in immediately and the dispute shall be settled on the basis of the federal or state inspector's findings with both parties reserving all statutory rights of appeal. If the dispute is not settled, a record shall be made of the position of the parties and the evidence at this step.

(4) If no agreement is reached at step 3 within five (5) days, the dispute shall be referred to an arbitrator for settlement in accordance with the procedure under Article XXIII, section (c), paragraph 4.

The grievant shall have the right to be present at each step, if he so desires, of the foregoing procedures until such time as all evidence is taken. A decision reached at any stage prior to step 4 of the proceedings above outlined shall be reduced to writing and signed by both parties. The decision shall be binding on both parties and shall not be subject to reopening except by mutual agreement.

Article XXIII—Settlement of Disputes

Section (a) Mine Committee

A committee consisting of at least three Employees shall be elected at each mine by the Employees at such mine. Each member of the Mine Committee shall be an Employee of the mine at which he is a committee member, and shall be eligible to serve as a committee member only so long as he continues to be an Employee of said mine. The duties of the Mine Committee shall be confined to the adjustment of disputes arising out of this Agreement that the mine management and the Employee or Employees fail to adjust. The Mine Committee shall have no other authority or exercise any other control nor in any way interfere with the operation of the mine; for violation of this section any and all members of the committee may be removed from the committee.

A Mine Committee member shall not be suspended or discharged for his official actions as a Mine Committee member. An Employer seeking to remove a Mine Committee member shall so notify the affected Mine Committee member and the other members of the Mine Committee. If the Mine Committee objects to such removal,

the matter shall be submitted directly to arbitration within 15 calendar days from such objection. If the other members of the Mine Committee so determine, the affected member shall remain on the Mine Committee until the case is submitted to and decided by an arbitrator. If the Employer requests removal of the entire Mine Committee, the matter automatically shall be submitted to arbitration within 15 calendar days after such request, and the Mine Committee will continue to serve until the case is submitted to and decided by an arbitrator.

Section (b) Arbitration Review Board

1. Within 60 days following the effective date of this Agreement, the United Mine Workers of America and the Bituminous Coal Operators' Association will establish an Arbitration Review Board composed of one representative of the UMWA, one representative of the Employer, and a chief umpire to be jointly selected by both parties. This 60-day period may be extended by mutual agreement.

2. The chief umpire jointly selected by the parties shall serve for the balance of this Agreement, unless removed by formal resolution adopted by either the International Executive Board of the United Mine Workers of America or the Board of Directors of the Bituminous Coal Operators' Association.

3. In the event of removal, resignation, death or incapacity of the chief umpire, the president of the UMWA and the president of the B.C.O.A. shall endeavor to select a mutually acceptable successor within 15 days. In the event the parties fail to agree, they shall request the aid of the Federal Mediation and Conciliation Service in selecting a mutually acceptable successor. The composition of the panel may be considered by the parties at the time when renewal agreements are being negotiated.

4. The presidents of the UMWA International Union and the B.C.O.A. shall jointly establish a panel of impartial arbitrators for each UMWA district. These panels may be changed, augmented or supplemented by mutual consent of the appointing parties. Arbitrators may be removed from a panel by either party upon 10 days advance written notice.

Section (c) Grievance Procedure

Should differences arise between the Mine Workers and the Employer as to meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time.

Disputes arising under this Agreement shall be resolved as follows:

1. The Employee will make his complaint to his immediate foreman who shall have the authority to settle the matter. The foreman will notify the Employee of his decision within 24 hours following the day when the complaint is made.

2. If no agreement is reached between the Employee and his foreman, the complaint shall be taken up within 7 working days of the foreman's decision by the mine committee and mine management. Where the committee consists of more than three members, the Employer shall have the right to meet with a maximum of three (to be chosen by the mine committee). The committee and management will complete the standard grievance form stating the Employee's grievance and the response of management.

3. If no agreement is reached by the committee and management within 7 working days after the complaint is taken up by them, the grievance shall be referred to a representative of the UMWA district, designated by the Union, and a representative of the Employer. Within 7 working days of the time the grievance is referred to them, the representative of the Union and the Employer shall review the facts and pertinent contract provisions in an effort to reach agreement. Unless both parties consent, no verbatim transcript of testimony shall be taken. Following the meeting, should they fail to settle the grievance, the representatives shall prepare a concise, joint statement. In the joint statement the Union and Employer will each set forth its views of the facts and its position on the contractual issues. The joint statement shall be signed by the representative of the UMWA district and the representative of the Employer. Neither the Union's representative nor the Employer's shall be persons who participated in steps one or two of this procedure.

4. In cases where the district representative and the representative of the Employer fail to reach agreement, the matter shall, within 10 calendar days after referral to them, be referred to the appropriate panel arbitrator who shall decide the case without delay. Cases shall be assigned to panel arbitrators in rotation. Unless testimony has been taken at step 3, at the earliest possible time, but no later than 15 days after referral to him, the arbitrator shall conduct a hearing in order to hear testimony, receive evidence and consider arguments. In cases where a transcript has been made at step 3, the arbitrator shall have the discretion to conduct a supplementary hearing at or near the mine site. In cases in which the parties have made no transcript at step 3, and the joint statement indicates that there is no question of fact involved in the grievance, the arbitrator may decide the case without a transcript and upon the basis of the joint statement of the parties, exhibits and briefs. The arbitrator's decision shall be final except as provided in paragraph 5 herein, and shall govern only the dispute before him. Expenses and fees incident to

the service of an arbitrator shall be paid equally by the Employer or Employers affected and by the UMWA district affected.

5. Either party to an arbitration, upon receiving a final award by a panel arbitrator, may petition the Arbitration Review Board to appeal the decision of the panel arbitrator. Such petition shall include a statement of the grounds for the appeal, which shall consist of one or more of the following:

(i) That the decision of the panel arbitrator is in conflict with one or more decisions on the same issue of contract interpretation by other panel arbitrators.

(ii) That the decision involves a question of contract interpretation which has not previously been decided by the Board, and which in the opinion of the Board involves the interpretation of a substantial contractual issue.

(iii) That the decision is arbitrary and capricious, or fraudulent, and therefore, must be set aside.

Upon receipt of such petition, the Arbitration Review Board shall review the decision of the panel arbitrator to determine whether grounds for appeal exist. If not, the Board will so inform the parties. If so, the Board shall review the decision of the panel arbitrator making whatever changes are necessary to assure that the final decision correctly resolves all contractual questions and issues presented, and is consistent with prior decisions of the Board. The Board's decision shall be made by majority vote, and it shall issue its decision within fifteen days. Following review, the Board shall countersign its decision and transmit a copy to each party.

Section (d) Fifteen Day Limitation

Any grievance which is not filed by the aggrieved party within fifteen calendar days of the time when the Employee reasonably should have known of it, shall be denied as untimely and not processed further.

Section (e) Earnest Effort to Resolve Disputes

An earnest effort shall be made to settle differences at the earliest practicable time. Where an Employee makes a complaint during work time, the foreman shall, if requested to do so, and if possible, consistent with continuous production, discuss the matter briefly on the spot.

Section (f) Employee's Right to Presence of Member of Mine Committee

Except where it will interfere with production, an Employee shall be entitled, at his request, to have a member of the Mine Committee present to assist him at any discussion with his foreman held pursuant to section (c)(2) of this Article.

Section (g) Right of Grievant to be Present

The grievant shall have the right to be present at each step of the grievance procedure until such time as all evidence is taken.

Section (h) Finality of Decision or Settlement

Settlements reached at any step of the grievance procedure shall be final and binding on both parties and shall not be subject to further proceedings under this Article except by mutual agreement. Settlements reached at steps 2 and 3 shall be in writing and signed by appropriate representatives of the Union and the Employer.

Section (i) Exclusion of Legal Counsel

Neither party will be represented by an attorney licensed to practice law in any jurisdiction in any of the steps of the grievance procedure except by mutual agreement applicable only to a particular case.

Section (j) Expenses of Chief Umpire

The expenses of the chief umpire, and his necessary office and staff expenses will be shared equally by the BCOA and the UMWA.

Section (k) Circulation of Approved Decisions

Panel arbitrators shall be furnished promptly with copies of all decisions entered by the Board. The chief umpire through his staff shall prepare a looseleaf binder which shall contain summaries of the Board's decisions with respect to contractual issues arising under the Agreement. The binder shall be organized along the lines of the Agreement and shall be indexed by subject matter and case title. The binder shall be maintained by the chief umpire through his staff on a current basis and copies of any pages changed to reflect new decisions shall be provided to the parties on a monthly basis.

Section (l) Waiver of Time Limits

By agreement the parties may waive the time limits set forth in each step of the grievance procedure.

Section (m) Settlement of Differences or Disputes During the First Sixty Days of this Agreement

During the first sixty days of this Agreement, or thereafter by a mutually agreed extension, the parties hereto agree to resolve differences or disputes covered by this Article in accordance with the Settlement of Disputes provisions of Article XVII of the National Bituminous Coal

Wage Agreement of 1971 which is adopted and incorporated herein by reference.

Article XXIV—Discharge Procedure

Section (a) Just Cause Required

No Employee covered by this Agreement may be disciplined or discharged except for just cause. The burden shall be on the Employer to establish grounds for discharge in all proceedings under this Agreement.

Section (b) Procedure

Where management concludes that the conduct of an Employee justifies discharge, the Employee shall be suspended with intent to discharge and shall be given written notice stating the reason, with a copy to be furnished to the Mine Committee. After 24 hours, but within 48 hours, the Employee shall be afforded the right to meet with the mine superintendent or manager. At such meeting, the Employee may request a member of the Mine Committee to be present.

Section (c) Suspension

If the Employer informs the Employee at the meeting between the Employee and the mine superintendent or manager that he still intends to discharge the Employee (or if no meeting was requested), the Employee remains suspended with intent to discharge for a period of time necessary to permit him to file a grievance and have it arbitrated. If the Employee does not file a grievance within five days of the notice of suspension with intent to discharge, the discharge shall become effective immediately.

Section (d) Immediate Arbitration

1. If the Employee or the Mine Committee believes that just cause for discharge does not exist, they may contact the UMWA District office within 24 hours after his meet-

ing with the mine superintendent to obtain immediate arbitration of the dispute, by-passing steps one through three of the grievance procedure.

2. The next available arbitrator on the panel shall immediately be assigned to hear the case.

3. The panel arbitrator selected shall hear the case within five days. At the conclusion of the hearing, the panel arbitrator shall at that time announce his decision which, except for review by the Arbitration Board, shall be binding on all parties. Following the hearing, the arbitrator shall forthwith reduce his decision to writing within 10 days. If the panel arbitrator determines that the Employer has failed to establish just cause for the Employee's discharge, the Employee shall be immediately reinstated to his job. If the arbitrator determines that there was just cause for discharge the discharge shall become effective upon the date of the arbitrator's decision.

Sectior. (e) Regular Arbitration

If neither the Employee nor the Mine Committee request immediate arbitration, the Employee shall be discharged at the conclusion of the fifth day of his suspension, and his case shall be processed in accordance with the provisions of Article XXIII (Settlement of Disputes).

Section (f) Compensation for Lost Earnings

In all cases where it is determined that just cause for discharge has not been established, the Employee shall be reinstated and compensated for lost earnings at his applicable straight and premium time rates prior to discharge. Provided, however, that such case shall be taken up within five (5) days from the date of discharge.

Article XXVII—Maintain Integrity of Contract and Resort to Courts

The United Mine Workers of America and the Employers agree and affirm that, except as provided herein, they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Disputes" Article of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract and by collective bargaining without recourse to the courts.

The Employer, however, expressly authorizes the Union to seek judicial relief, without exhausting the grievance machinery, in cases involving successorship.

APPENDIX B

BCOA Wildcat Strike Losses, 1973-1977

Years	Man-days Lost	Payroll Loss	Tonnage Loss	Trust Funds Loss
1973	529,200	$ 26,298,400	7,043,000	$ 4,817,400
1974	1,023,800	53,819,000	11,686,700	10,509,500
1975	1,417,400	78,752,200	15,826,000	22,153,200
1976	1,950,300	109,897,900	20,477,300	37,666,300
1977 [through April]*	630,900	38,137,900	6,648,100	12,896,800

*preliminary

APPENDIX C

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS

2021 K Street, N.W.
Washington, D.C. 20006
202-452-5156

Board of Trustees
Harry Huge, Chairman
C. W. Davis, Trustee
Paul R. Dean, Trustee

1950 & 1974 Pension Trusts
1950 & 1974 Benefit Trusts

NEWS RELEASE

Contact: Barbara Moldauer
Telephone: 202/452-5173

February 25, 1977—Losses of income from the current series of work stoppages in the coalfields have placed the 1950 Benefit Trust and the 1974 Benefit Trust in a very difficult financial position, the trustees of the United Mine Workers of America (UMWA) Health and Retirement Funds announced today.

The trustees said the situation is such that any further loss of income will require adjusting the scope of the Funds' health benefits package to bring expenditures within the bounds of the Trusts' financial resources. They added that these adjustments will take the form of cutbacks in the overall level of health benefits, or the elimination of certain benefits entirely, and that beneficiaries of both the Benefit Trusts will be affected.

Although losses in income have had an adverse effect upon the financial situation of all four trust funds, the two Benefit Trusts have been hardest hit. During the first two

months of this year, the 1950 Benefit Trust and the 1974 Benefit Trust have lost an estimated $1.6 million in income as a result of work stoppages and an additional $9 million because of inclement weather. Even prior to these losses, the two Benefit Trusts were experiencing severe financial problems.

The financial problems of the 1950 Benefit Trust first surfaced in May 1976, causing the Funds' trustees to request the settlors of the Funds (the United Mine Workers of America and the Bituminous Coal Operators Association) to authorize a reallocation of income from the 1950 Pension Trust to the 1950 Benefit Trust for coal produced during the months of May and June.

Additional losses of income from subsequent work stoppages forced the trustees to request a second reallocation, this time for the remainder of the contract period, which was approved on October 5, 1976. The second reallocation shifted a portion of the income originally earmarked for the 1974 Benefit Trust to the 1950 Benefit Trust, and to the two Pension Trusts.

At the time the second reallocation was approved, the Funds' trustees warned that future reallocations would be impossible, and that benefits could be maintained at their current levels only if coal production remained at maximum levels for the remainder of the contract period. At this point, neither the 1950 Benefit Trust nor the 1974 Benefit Trust has the resources to absorb any further losses of income, leaving the Funds' trustees no alternative but to cut back or eliminate health benefits if work stoppages continue.

The 1950 and 1974 Benefit Trusts currently provide health benefits for more than 800,000 active and retired mine workers and their dependents, as well as death benefits for the survivors of such mine workers.